

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**AMERICARE HEALTHCARE
SERVICES, LLC** and **DILLI
ADHIKARI**,

Defendants.

ACTING SECRETARY'S MOTION FOR SUMMARY JUDGMENT

Pursuant to this court’s August 13, 2024 order, the Acting Secretary submits this revised motion addressing the Supreme Court’s recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), 144 S. Ct. 2244 (2024); as explained in the accompanying Memorandum in Support of Plaintiff’s Motion for Summary Judgment, *Loper Bright* does not change the outcome of this case.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff Julie A. Su, Acting Secretary of Labor, U.S. Department of Labor (“Acting Secretary” or “Plaintiff”) moves this Court for an Order summarily finding Defendants Americare Healthcare Services, LLC (“Americare”) and Dilli Adhikari (“Adhikari”) (collectively, “Defendants”) violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, when they willfully failed to pay their non-exempt employees the overtime premium rate for hours worked over 40 in multiple workweeks and failed to maintain accurate records. Acting Secretary further seeks an Order finding Defendants are liable for \$7,478,672.75 in back wages and \$7,478,672.75 in liquidated damages as a result of Defendants’ overtime violations between October 19, 2018 and April 14, 2024.

Defendants willfully violated the FLSA's overtime provisions by paying their employees straight time for all hours worked and, during a portion of the relevant period, attempting to mask these violations by artificially lowering employees' hourly rates when they worked more than forty hours to create illusion of paying overtime. Defendants also failed to maintain records of their employees' weekly hours worked, regular hourly rates, or total weekly overtime premium pay, as required by the FLSA. Defendants' failure to compute overtime on a workweek basis, as opposed to a pay period basis, constitutes a recordkeeping violation and demonstrates Defendants' willfulness.

As discussed more fully in the Acting Secretary's accompanying Memorandum in Support of Plaintiff's Motion for Summary Judgment, this Court should find Plaintiff is entitled to liquidated damages in an equal amount to the back wages owed as a result of Defendants' FLSA violations. Finally, Defendants' blatant disregard for the obligations imposed by the FLSA, which continue to this day, entitles the Acting Secretary to injunctive relief.

Accordingly, the Acting Secretary moves this Court for an Order:

1. Identifying Defendant Adhikari to be an "employer" jointly and severally liable with Americare for violations of the FLSA;
2. Finding Defendants violated the FLSA between October 19, 2018 and April 14, 2024 by failing to pay their employees premium overtime wages for hours worked in excess of 40 in a workweek;
3. Finding Defendants violated the FLSA between October 19, 2018 and April 14, 2024 by failing to maintain accurate and adequate records;
4. Finding Defendants' violations of the overtime provisions of the FLSA between October 19, 2018 and April 14, 2024 were willful;

5. Requiring Defendants to produce payroll and time records for workers employed as home health aides that cover the period of April 15, 2024 through the date of the Court's Order requiring production of such records;

6. Awarding the Acting Secretary \$7,478,672.75 in back wages and \$7,478,672.75 in liquidated damages, in addition to as yet unknown back wages and liquidated damages for the overtime violations that took place after April 14, 2024; and

7. Enjoining Defendants against future violations of the FLSA.

Respectfully submitted,

Seema Nanda
Solicitor of Labor

Christine Z. Heri
Regional Solicitor

Leah A. Williams
Associate Regional Solicitor

/s/ Rina R. Russo
RINA R. RUSSO (0087761)
Counsel for Wage & Hour
STEPHEN M. PINCUS
HALEY R. JENKINS
Trial Attorneys
U.S. Department of Labor
881 Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44199
(216) 522-2447
(216) 522-3877
(216) 522-7172 (fax)
Russo.Rina.R@dol.gov
Pincus.Stephen.M@dol.gov
Jenkins.Haley.R@dol.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2024, the foregoing document was filed electronically with the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Rina R. Russo

RINA R. RUSSO

One of Plaintiff's Attorneys